

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MIGUEL OMAR OJEDA-ENRIQUEZ,

Case No. 2:18-cv-01207-RFB-VCF

Petitioner,

ORDER

v.

WARDEN, et al.,

Respondents.

Before the Court are Petitioner Miguel Omar Ojeda-Enriquez's motions for discovery and to stay the case. ECF Nos. 23, 24. Respondents filed responses to both motions and Ojeda-Enriquez replied. ECF Nos. 25- 28.

**I. Background and Procedural History**

Ojeda-Enriquez states that he pleaded guilty to two counts of sexual assault on a child under fourteen. ECF No. 23, 4. He was sentenced to two consecutive terms of 35 years to life. ECF No. 12, 8. In June 2018, Ojeda-Enriquez submitted a *pro se* habeas petition and motion for appointment of counsel. See ECF No. 1 and attachments; ECF No. 4. The Court appointed the Federal Public Defender (FPD) as Petitioner's counsel, and Ojeda-Enriquez filed a counseled, first-amended petition. ECF Nos. 7, 12. He made it clear that the expiration of the statute of limitations was imminent and that the first-

1 amended petition was filed to preserve all potential claims for relief pending counsel's full  
2 review and investigation of the case. Contemporaneously with the first-amended petition,  
3 Ojeda-Enriquez filed a motion for leave to file a second-amended petition, which the Court  
4 granted. ECF Nos. 14, 16. Now he has filed a motion for discovery as well as a motion  
5 for stay or in the alternative for an extension of time to file the second-amended petition.  
6 ECF Nos. 23, 24. Respondents filed an opposition to the motion for discovery. ECF No.  
7 26. Petitioner replied. ECF No. 27. Respondents filed an opposition to the motion to  
8 stay, though they also stated that they did not, in principle, oppose an extension of time  
9 to file an amended petition. ECF No. 25. Petitioner replied. ECF No. 28.

## 11 II. Motion for Discovery

12 Rule 6(a) of the Rules Governing Section 2254 Cases in the United States District  
13 Courts states, "A judge may, for good cause, authorize a party to conduct discovery under  
14 the Federal Rules of Civil Procedure and may limit the extent of discovery." If, through  
15 "specific allegations before the court," the petitioner can "show reason to believe that the  
16 petitioner may, if the facts are fully developed, be able to demonstrate that he is . . .  
17 entitled to relief, it is the duty of the court to provide the necessary facilities and  
18 procedures for an adequate inquiry." Bracy v. Gramley, 520 U.S. 899, 908 –09 (1997)  
19 (quoting Harris v. Nelson, 394 U.S. 286, 300 (1969)). The Supreme Court noted that the  
20 facts of Bracy made it an abuse of discretion not to allow discovery, "Rule 6(a) makes it  
21 clear that the scope and extent of such discovery is a matter confided to the discretion of  
22 the District Court." Bracy, 520 U.S. at 909.

23 However, discovery in a federal habeas action does not necessarily extend to  
24 unexhausted federal claims. Calderon v. U.S. Dist. Court for the E. Dist. of  
25 California ("Roberts"), 113 F.3d 149 (9th Cir. 1997) (finding that district court's grant of  
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1 discovery was “inappropriate” when habeas petition contained unexhausted claims).  
2 Moreover, in Cullen v. Pinholster, 563 U.S. 170, 183–84 (2011), the Supreme Court held  
3 that if a claim has been adjudicated on the merits by a state court, a  
4 federal habeas petitioner must overcome the limitations of section 2254(d)(1) based  
5 upon the record that was before that state court.  
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7 Generally, with respect to a claim adjudicated on the merits in state court, evidence  
8 not presented to the state courts may not be introduced on federal habeas corpus review,  
9 so long as the state court’s factual findings were not unreasonable. See Murray v. Schriro,  
10 745 F.3d 984, 999 (9th Cir. 2014). However, when determining whether a petitioner has  
11 established cause to excuse a procedural default of a claim for ineffective assistance of  
12 counsel pursuant to Martinez v. Ryan, the Court may consider that evidence to grant  
13 habeas relief on the underlying claim. Jones v. Shin, 943 F.3d 1211, 1215 (9th Cir. 2019).  
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15 Here, Ojeda-Enriquez first argues that he can show good cause for discovery (ECF  
16 No. 23, pp. 4-5). He sustained a gunshot wound to the head before the crimes to which  
17 he pled guilty occurred. His current counsel has retained a neurologist who has said that  
18 there are links between brain injuries in the region where Ojeda-Enriquez sustained his  
19 injury and changes in sexual behavior and preferences. The neurologist said such  
20 injuries can also cause irresistible impulses. The neurologist recommended that Ojeda-  
21 Enriquez undergo a brain CT scan in order to isolate the exact region that was impacted  
22 by the gunshot wound. Ojeda-Enriquez contends that the requested CT scan would at a  
23 minimum support claims of ineffective assistance of counsel, which were raised in  
24 Grounds 12. Id. Petitioner further argues that such evidence could support a possible  
25 Martinez claim. See Martinez v. Ryan, 566 U.S. 1 (2012) (habeas petitioner can establish  
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1 cause for procedural default of claim of ineffective assistance of counsel at trial with  
2 showing of inadequate assistance of counsel at initial review collateral proceeding).

3 Respondents assert that the Supreme Court in Bracy held that Rule 6 was meant  
4 to be applied consistently with the opinion in Harris v. Nelson, 394 U.S. 286 (1969). Harris,  
5 in turn, held that “where specific allegations before the court show reason to believe that  
6 the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . .  
7 entitled to relief, it is the duty of the court to provide the necessary facilities and  
8 procedures for an adequate inquiry.” Harris, 394 U.S. at 300. They argue that the  
9 discovery request is premature because Ojeda-Enriquez has not yet filed a second-  
10 amended petition and therefore there is no way to determine at this time what claims, if  
11 any, the requested discovery would or would not support. Further, Respondents point out  
12 that Ojeda-Enriquez has made no mention of presenting his discovery request or the  
13 results thereof to the state courts.  
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16 As a preliminary matter, the Court disagrees with Respondents that the motion is  
17 premature. Petitioner has filed an amended petition and been granted leave to amend  
18 that petition, and the Court finds that this is sufficient to give Respondents notice of the  
19 claims for which Petitioner seeks discovery. See McDaniel v. U.S. Dist. Court for the Dist.  
20 of Nev., 127 F.3d 886, 887 – 88 (9th Cir. 1997). Ojeda-Enriquez seeks discovery in the  
21 form of a CT scan of his brain to attempt to identify the specific region where he sustained  
22 an injury; depending on what or whether a region is identified by a scan. Unlike other  
23 cases in which the Ninth Circuit has upheld a district court’s failure to find good cause to  
24 award discovery, what Petitioner seeks is clear—one CT scan—and the discovery does  
25 not unnecessarily burden the state. Compare with Earp v. Davis, 881 F.3d 1135, 1144  
26 (9th Cir. 2018) (rejecting request for further discovery regarding possible prosecutorial  
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1 misconduct when missing evidence already permitted adverse inference sought by  
2 petitioner). To the extent that there may be a question as to whether Petitioner has  
3 clearly developed the factual basis for such discovery and legal claims in the state courts,  
4 Bracy does not require that the Court make that determination at this point, and if  
5 Petitioner has and raises a valid Martinez claim, the issue may be moot. The Court  
6 therefore grants Petitioner's motion for discovery.  
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### 8 III. Motion for Stay or Extension of Time

9 Ojeda-Enriquez has also moved for a stay of these federal proceedings (ECF No.  
10 24). The FPD explains that the necessary investigation into Ojeda-Enriquez's gunshot  
11 wound to the head and any brain injury and possible link to the crimes at issue is  
12 anticipated to be time-consuming. Counsel notes that they are working with prison  
13 officials to schedule a time when the retained neurologist can meet with Ojeda-Enriquez.  
14 Counsel also states that additional records, including from a government agency, need  
15 to be obtained. This Court has the inherent power to control its docket and the disposition  
16 of its cases with economy of time and effort for both the court and the parties. See Ferdik  
17 v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.1992). Moreover, the Court is mindful that  
18 current restrictions and safety protocols in response to the COVID-19 pandemic, including  
19 strict limitations on visitation in Nevada prisons, the tele-work of the FPD, and the Nevada  
20 guidelines regarding social distancing and non-essential commerce and activities, will  
21 impact counsel's ability to investigate this case and prepare the amended petition at this  
22 time.<sup>1</sup> There is no indication here that petitioner seeks a stay for the purposes of delay.  
23 The motion for stay is, therefore, granted. In granting the stay, however, the Court makes  
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<sup>1</sup> See, e.g., [http://doc.nv.gov/About/Press\\_Release/covid19\\_updates/](http://doc.nv.gov/About/Press_Release/covid19_updates/); nvhealthresponse.nv.gov.

1 no assurances as to whether any claims in the second-amended petition will be  
2 considered timely.

3 **IV. CONCLUSION**

4 **IT IS THEREFORE ORDERED** that Petitioner's motion for discovery (ECF No. 23)  
5 is **GRANTED**.

6 **IT IS FURTHER ORDERED** that Petitioner's motion for issuance of stay and  
7 abeyance (ECF No. 24) of this federal habeas corpus proceeding is **GRANTED**.

8 **IT IS FURTHER ORDERED** that this action is **STAYED**.

9 **IT IS FURTHER ORDERED** that the grant of a stay is conditioned upon petitioner  
10 returning to federal court with a motion to reopen the case when counsel concludes  
11 investigation of his case.

12 **IT IS FURTHER ORDERED** that the Clerk **SHALL ADMINISTRATIVELY CLOSE**  
13 this action, until such time as the Court grants a motion to reopen the matter.

14 **IT IS FURTHER ORDERED** that Petitioner's motion for extension of time to file a  
15 second-amended petition (ECF No. 22) is **DENIED** as moot.

16 DATED: 13 July 2020.

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22 **RICHARD F. BOULWARE, II**  
23 **UNITED STATES DISTRICT JUDGE**  
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